

**IN THE U.S. DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ANDRE McCLAIN	:	CIVIL ACTION
v.	:	NO. 02-CV-3538
JUDGE JOHN J.CHIOVERO	:	
JUDGE AMANDA COOPERMAN	:	

**MOTION OF DEFENDANTS,
HON. JOHN J. CHIOVERO AND HON. AMANDA COOPERMAN,
TO DISMISS PLAINTIFF'S COMPLAINT**

Defendants, Hon. John J. Chiovero and Hon. Amanda Cooperman, Judges of the Court of Common Pleas of Philadelphia County, by and through their counsel, Mary E. Butler, Esquire, move this Court to dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and in support thereof aver the following:

(1) On June 14, 2002, Plaintiff, an inmate incarcerated at the Curran-Fromhold Correctional Facility, filed this pro se civil rights action pursuant to 42 U.S.C. §1983 against Philadelphia County Court of Common Pleas Judges, John J. Chiovero and Amanda Cooperman. (Complaint, Parties Section)

(2) Plaintiff claims that he "was coerced into taking probation..." and that his "constitutional rights have been violated by not giving [him] a hearing on [two] cases within two years." (Complaint, pg. 4, Statement of Claims Section)

(3) Plaintiff states that "[t]he crux of [his] problems is the detainer which has been lodged on [him] since July 20, 2000 with no Gagnine I or Gagnine II hearings (sic) and no violation hearing within 120 days." (Id. pg. 5)

(4) Plaintiff claims that he is "on probation illegally"; that the [d]iscriminating abuse of a detainer is the only reason [he] remains dormant ..."; and that the "...open matter (00071331) continues to stagnate violating [his] speedy trial right." (Id)

(5) Plaintiff contends that he asked Defendant Judge Chiovero on "several accounts to at least 'send [plaintiff] home on house arrest till the outcome'" and "to lift detainer (sic) allow [him] to return home until outcome of this extended extremely weak matter." (Id.)

(6) The only semblance of an allegation Plaintiff makes against Defendant Judge Cooperman is "for her to stop prolonging this matter and close the matter if [sic] you have no grounds for pursuence (sic) of evidence to convict. Please stop harassing my family and I, (sic) evidence of police reports and accusers statement won't show what their (sic) accusing me of. Hospital records don't match as well." (Id.)

(7) Plaintiff states that his family is being put "through turmoil" and he is put "in a position of loss of consorsuim (sic)." (Id.)

(8) As relief, Plaintiff requests that "[a]s case with Judge J.J. Chioverio [sic]: [he] would like for detainer certified till outcome of open matter (house arrest)." And that " [a]s of case with Judge A. Cooperman: [he] would like for this open matter to stop being extended and come to a close, if you have no grounds of a case!" (Id.)

(9) Defendants, Judge Chiovero and Judge Cooperman, move for dismissal of Plaintiff's Complaint on the grounds that

(a) Plaintiff's allegations fail to state a claim upon which relief can be granted under 42 U.S.C. §1983;

(b) Plaintiff's action essentially seeks release from custody and, therefore, is more appropriately brought as a *habeas corpus* action which requires exhaustion of state remedies;

(c) this Court should abstain pursuant to the Younger doctrine from interfering in ongoing State Court proceedings; and

(d) the Feldman-Rooker doctrine and 28 U.S.C. §1257 preclude this Court from a collateral review of a State Court decision.

WHEREFORE, for the above stated reasons and those more fully outlined in the accompanying Memorandum of Law it is respectfully requested that Plaintiff's Complaint be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on August 14, 2002, she personally caused to be served upon the following a true and correct copy of *Motion of Defendants, Hon. John J. Chiovero and Hon. Amanda Cooperman, to dismiss Plaintiff's Complaint*, together with proposed Order, supporting Memorandum of Law, and Certificate of Service, by mailing same first class, postage prepaid, U.S. mail to:

Andre McClain #779084
Curran-Fromhold Correctional Facility
7901 State Road
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